

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 221 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHIMANBHAI ZAVERBHAI PATEL

Versus

PRATIBHABEN VIDYADHAR DESHPANDE

Appearance:

MR MTM HAKIM for Petitioner

MR. NIRAV K MAJMUDAR for MR PB MAJMUDAR for
Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 31/03/97

CAV JUDGEMENT

By the present Civil Revision Application, the petitioner tenant has challenged the validity of the order passed in Reg. Civil Appeal No. 98/83 decided on 17.10.1987 by the 4th Extra Asstt. Judge, Baroda whereby the decree passed in Rent Suit No. 315/77 on 16.9.1982 by the Addl. Small Causes Judge, Baroda was confirmed. Thus, the petitioner tenant has challenged the concurrent findings arrived at in favour of the plaintiff landlady

whereby the petitioner has been directed to hand over possession of the suit premises before 31.12.1988.

During the pendency of the present CRA, the petitioner was protected by an interim order of this Court and, therefore, the petitioner is at present in possession of the suit premises.

The plaintiff landlady is an owner of Block No.15 situated at Harikrupa Co.Op. Society comprising of 2 rooms, kitchen, warrandah, bathroom and a latrine. The plaintiff landlady had filed Rent Suit No. 315/77 on the ground that the defendant tenant was in arrears of rent for a period commencing from 1.9.1976 to 30.4.1977. Another ground on which the said suit was filed was with regard to bonafide requirement of the plaintiff landlady. It was a case of the plaintiff landlady that she had school going children and as the school in which children of the landlady were to study was near the suit premises, it was necessary for the landlady to shift to the suit premises. Moreover, her husband who was serving in the government was to submit his resignation and he had a desire to settle at Baroda. Either he wanted to do business or wanted to take up a job at Baroda and, therefore, even before his superannuation, he wanted to leave his job and settle at Baroda. At the relevant time, the landlady had no other house and, therefore, she wanted herself and her family to stay in the suit premises. It was further submitted before the trial court by the plaintiff landlady that her paralytic father-in-law was residing at Bombay and was staying in a building on 4th floor. Her father-in-law wanted to shift

to Baroda so as to stay with his son and on the ground floor and as the suit premises are situated on the ground floor, the landlady wanted possession of the suit premises.

With regard to arrears of rent, the trial court came to a conclusion that the tenant was not in arrears of rent and the said finding was confirmed by the appellate court. So far as the ground with regard to bonafide requirement is concerned, the courts below came to a conclusion that the landlady bonafidely required the suit premises and, therefore, the suit was decreed, and even the appeal filed against the judgment and decree was dismissed. Thus, being aggrieved by the concurrent findings arrived at by the trial court as well as by the appellate court, the petitioner tenant has approached this court by way of this revision application.

Ld. Advocate Mr. MTM Hakim appearing for the petitioner tenant has submitted that the findings arrived at by the courts below are not only unreasonable, but are also perverse. He has further submitted that several subsequent developments which had taken place during the pendency of the proceedings, have not been considered by the appellate court. He has further submitted that some developments have also taken place during the pendency of this revision application and looking to the said subsequent developments, the revision application deserves to be allowed and the findings arrived at by the courts below should be quashed and set aside.

Ld. Advocate Mr. Hakim has submitted that due to developments which have taken place after filing of the suit, the landlady cannot be said to have bonafide requirement of the suit premises at present. He has also submitted that in view of judgment delivered by this Court in CRA No. 1619/86, subsequent events should be taken into account while deciding this CRA.

He has submitted that school going children of the landlady have now been grown up during pendency of the litigation. They have also completed their studies. He has further submitted that one of the sons of the plaintiff landlady has now settled in Ahmedabad. He has thus submitted that the suit premises are not needed for the benefit of the children.

Mr. Hakim has thereafter submitted that husband of the landlady has already resigned and has now settled well in Baroda. He has further submitted that father-in-law of the plaintiff landlady must have settled well at Bombay in the mean while and it might not be necessary for him at this stage to get himself shifted to Baroda as he has been staying at Bombay on 4th floor of a building since long.

Mr. Hakim has further submitted that during the pendency of the said litigation, father of the landlady has expired. Father of the landlady had a three-storied building at Baroda near Khanderao Market. The landlady has two sisters and upon the sad demise of the landlady's father, three-storied building has been now inherited by the landlady and her two sisters. It has been submitted by Mr. Hakim that even at the time when the suit was instituted by the plaintiff landlady, she and her family members were staying in the said premises on the ground floor. Mr Hakim has submitted that even at the time when the suit was filed, the landlady could have called her father-in-law in the premises in which she was staying at

the relevant time for the reason that except her family, nobody else was staying in the said premises.

In view of the said subsequent development, according to Mr Hakim, now 1/3rd of the building in which the plaintiff landlady is staying belongs to her. It is the say of Mr. Hakim that two sisters of the plaintiff landlady are not staying at Baroda. One of them is staying at Bombay and another one is staying at Delhi. In the circumstances, there is no possibility of her sisters occupying the premises wherein the landlady is staying at present and, therefore, more hardship would be caused to the defendant tenant, if he has to vacate the suit premises.

Mr Hakim has also submitted that the plaintiff landlady was never asked by her father to vacate the premises wherein she and her family is staying at present. Neither any notice was given to her nor any suit for eviction was filed by the father and therefore as there was no threat for eviction, it is not at all necessary for the plaintiff landlady to vacate the premises occupied by her. He has also relied upon a judgment delivered in case of Pannalal Manilal & Anr. v/s Mistry Mulshankar Chhotalal reported at page 177 of AIR 1988 Guj. in support of his abovementioned submission.

Ld. Advocate Mr. Hakim has submitted that the courts below did not consider the question with regard to comparative hardship and thereby they have materially erred in law as well as in facts by not coming to the conclusion that the comparative hardship would be more to the tenant in the event of his eviction from the suit premises. He has submitted that in the light of judgment delivered in case of Bhaichand Ratanshi v/s Laxmishankar Tribhovan reported at page 1063 of 22 GLR the Courts below ought not to have passed decree in favour of the plaintiff landlady.

For the above-referred reasons, Mr. Hakim has submitted that concurrent findings arrived at by the courts below are neither reasonable nor just and proper. He has submitted that no man with ordinary prudence would ever come to the conclusion that in the facts and circumstances of the case, the defendant tenant should be asked to vacate the suit premises.

Ld. Advocate Mr. Hakim has taken me through the entire judgment and has tried to show that the premises

occupied by the landlady at present is more spacious than the suit premises. The suit premises consist of two rooms, kitchen, warrandah, bathroom and latrine whereas the building in which the plaintiff landlady is staying at present consists of approximately 13 rooms. He has reiterated that sisters of the plaintiff landlady are not likely to use their share of the said building and, therefore, it is open to the plaintiff landlady to use the entire building consisting of 13 rooms and, therefore, she is having sufficient and spacious accommodation where her entire family and her father-in-law can stay. On the other hand, if the tenant is constrained to vacate the suit premises, the defendant tenant would be put to hardship as he has no other house in Baroda city.

Ld. Advocate Mr. Hakim has relied upon judgment delivered in the case of Amarjitsingh Vs. Smt Khatoon Quamarain, reported at page 741 of AIR 1987 Supreme Court to show that developments which have taken place during the pendency of litigation can be taken into account by the Court. He has also relied upon other judgments to substantiate his above-referred submission.

Ld. Advocate Mr. Hakim has also submitted that simply because the courts below have arrived at the same conclusion and there are concurrent findings in favour of the plaintiff landlady, there is no obligation on the part of this court to dismiss the revision application. He has submitted that if the concurrent findings arrived at by the Courts below are unreasonable or are such that no man with ordinary prudence would ever come to such a conclusion, such concurrent findings arrived at by the courts below can be disturbed by the High Court. In support of the said submission, Ld. Advocate Mr. Hakim has relied upon the judgment delivered in the case of M/s Variety Emporium Vs. V.R.M. Mohammad Ibrahim Naina reported at page 207 of AIR 1985 SC.

Thus, Ld. Advocate Mr. Hakim has submitted that the concurrent findings arrived at by the Courts below are not justified and looking to the peculiar facts of the case, the revision application filed by defendant tenant be allowed.

On the other hand, Ld. Advocate Mr. Nirav Majmudar has strongly submitted that there is no reason for this Court to disturb the concurrent findings arrived at by the courts below. He has submitted that findings arrived at by the courts below are absolutely reasonable and in the facts and circumstances of the case, another

conclusion is not possible and the decree for eviction has been rightly passed by the trial court which has also been confirmed by the appellate Court. In support of his above-referred submission, he has relied upon judgment delivered by the hon'ble Supreme Court in the cases of Firoz Bamanji Desai Vs. Chandrakant M Patel & others reported in AIR 1974 SC 1059, Rashpal Malhotra Vs. Mrs Satya Rajput and another reported in AIR 1987 SC 2235 and Smt Fatima Bee Vs. Mahmood Siddiqui, reported in AIR 1996 SC 2537.

He has also submitted that even if two views are possible and one view has been accepted by the courts below, the High Court should not take its own view so as to disturb the findings arrived at by the courts below. In support of his above-referred submission, he has relied upon a judgment delivered in the case of Helper Girdharlal Vs. Saiyed Mohd. Meerasaheb Kadri and others reported at page 1782 of AIR 1987 SC.

On the merits of the case, Ld. Advocate Mr. Majmudar has submitted that even after changed circumstances, the plaintiff landlady still requires the suit premises and she is still having bonafide requirement of the said premises. It has been submitted by Mr. Majmudar that it is true that father of the plaintiff landlady expired during the pendency of litigation, but that would not mean that the landlady would get ground floor of the premises which was owned by her father. He has submitted that the plaintiff landlady has two sisters and though at present they are not staying at Baroda, according to Mr. Majmudar, it cannot be said that the entire building will become the property of the plaintiff landlady. It has also been submitted by Ld. Advocate Mr. Majmudar that two sisters of the plaintiff landlady would be havinig their shares in the said building and it is still not certain whether the plaintiff landlady would get ground floor of the said building or not. Ld. Advocate Mr. Majmudar has also submitted that there is nothing on record to show that no will was prepared by the father of the plaintiff landlady so as to enable the plaintiff landlady to get 1/3rd share in the said property. He has not ruled out the possibility of a will being executed by the father of the landlady giving some right to somebody and depriving the plaintiff landlady of her possible share in the suit premises. In the circumstances, he has submitted that it cannot be said that due to sad demise of the father of the plaintiff landlady, she would either get entire building to occupy or would get the ground floor of the said building. He has thus submitted that till now the

plaintiff landlady has not received any share in the said building which belonged to her father and he has also called upon the other side to give even a semblance of evidence to show that the plaintiff landlady has received any right in the said building. The defendant tenant has not adduced any evidence to substantiate his submission that the plaintiff landlady has received any right in the said building which belonged to the plaintiff's father.

Ld. Advocate Mr. Majmudar has submitted that the ailing father-in-law of the plaintiff landlady is still at Bombay and is unable to shift to Baroda- a place where he desires to settle during the last days of his life. He has submitted that only for the reason that the house in which the plaintiff landlady and her husband are staying at present belongs to father-in-law of his son, father-in-law of the landlady is not shifting to Baroda. It has been submitted by Ld. Advocate Mr. Majmudar that normally a person with self respect would not like to stay in a house belonging to in-laws of his son. Even in the instant case, father-in-law of the landlady- a man with self respect, would not like to spend last few years of his life in a house belonging to the in-laws of his son. He has submitted that still the property in which the plaintiff landlady is staying has not become her own property and, therefore, bonafide requirement for shifting to the suit premises still survives. Moreover, the father in law of the plaintiff, being an old and paralytic person, would like to stay on a ground floor and the suit premises would be the most suitable place for him to stay. Mr Majmudar has submitted that even if share in the building belonging to the plaintiff's father is given to the plaintiff, it is not certain whether she would get ground floor of the said building. It has been thus submitted by him that the plaintiff landlady is still in need of the suit premises for the purpose of shifting her father in law to Baroda from Bombay.

Ld. Advocate Mr. Majmudar has thereafter submitted that husband of the plaintiff landlady has already submitted his resignation. He has submitted that husband of the plaintiff landlady would like to stay in a house belonging to his wife. He has, therefore, submitted that the ground with regard to bonafide requirement still subsists and, therefore, there is no reason to disturb the concurrent findings arrived at by the courts below.

Ld. Advocate Mr. Majmudar has submitted that it is always for the landlord to decide as to whether a

particular accommodation would be suitable to him. Simply because a person has got some alternative accommodation, it cannot be said that the landlord or the landlady, as the case may be, should be asked or constrained to continue to stay at the place where he or she is staying. He has relied upon the following judgments delivered by the Hon'ble Supreme Court in support of the above-referred contention:-

- (1) Mrs Meenal Eknath Khirsagar Vs. Traders
& Agencies and another, 1996(5) SCC 344
- (2) Smt Parvatidevi Vs. T.V. Krishnan,
1996(5) SCC 353

He has drawn my attention to the facts of the cases referred to herein above which clearly denote that it is not for the Court to decide whether accommodation which the landlord is having at the time of filing of the suit for eviction is suitable for the landlord. Only the landlord can decide whether a particular type of accommodation will be suitable to him. In the circumstances, he has submitted that the tenant cannot be permitted to contend that accommodation which the plaintiff landlady is having at present, is suitable for her.

Ld. Advocate Mr. Majmudar has also submitted that it would not be just and proper for this Court to disturb the concurrent findings arrived at by the Courts below simply for the reason that it is possible to have another view in the matter. He has submitted that if two views are possible and one view has been adopted by the Courts below, according to law laid down by this Court in the case of B.D. Sahastrabuddhe v/s Madhusudan Mahadev Dev through his heirs Balkrishna & others (37(1) GLR 428). It would not be proper for the High Court to reappreciate the evidence and to take a different view.

Ld. Advocate Mr. Majmudar, of course, could not deny the fact that children of the landlady have grown up and it is not necessary for them to go to a school where they were to study. He has however submitted that though there is no need to shift to her own house for children's need, bonafide requirement of the landlady still subsists on other grounds made out in the plaint which were found to be genuine and bonafide by the courts below.

After hearing the concerned advocates and upon perusal of the relevant documents, I am of the view that the concurrent findings arrived at by the Courts below need not be disturbed. None can say that the findings

arrived at by the Courts below are unreasonable or perverse. In the circumstances, I do not think it proper to quash and set aside the impugned order.

It is true that one of the grounds on which the plaintiff landlady had filed the suit for eviction might not be available to her at present. It is true that the children have now grown up and it would not be necessary to have the suit premises for the plaintiff landlady for the purpose of convenience of her children. At the same time, it is equally true that the husband of the plaintiff landlady has submitted his resignation during the pendency of litigation and has shifted to Baroda from the place where he was rendering his services at the time when the suit was filed. One of the purposes for which the suit premises were required by the plaintiff landlady was to accommodate her family in her own house after retirement of her husband. The fact remains that her husband has resigned and has left the job. Thus, it cannot be said that the ground of bonafide requirement does not survive at all. It is also equally true that the ailing father-in-law of the plaintiff landlady is still in Bombay at the 4th Floor of a multistoried building. Her father-in-law is keen to shift to Baroda, but at the same time, he does not want to shift to a place belonging to the plaintiff's father. It appears that an old ailing father-in-law of the plaintiff would surely find it more convenient to stay in the house belonging to his daughter-in-law which is a tenement having ground floor. The father-in-law is alive and, therefore, one can very well say that the bonafide requirement still survives.

It is true that there is a subsequent event with regard to the death of the plaintiff's father. It is an admitted fact that the father of the plaintiff landlady has died during the pendency of the litigation but it is not known whether any will was executed by her father. Even if 1/3rd of the said building is to be inherited by the plaintiff landlady, it is not certain as to which portion would be given to the plaintiff landlady. Simply because sisters of the plaintiff landlady are staying at different places, it cannot be said that the plaintiff landlady will be in a position to have the entire building or portion of her choice of the said building.

As observed by the Hon'ble Supreme Court in the case of Mrs Meenal Eknath Kshirsagar Vs. Traders & Agencies and another, (1996) 5 SCC 344 it is clear that it is for the landlady to decide as to how and in what

manner she should live and she is the best judge of her residential requirements. In the instant case, the plaintiff landlady wants to shift to her own house as that is on the ground floor and ground floor is more convenient to her and to her father-in-law and, therefore, it cannot be said that the plaintiff landlady is not having bonafide requirement of the suit premises.

Ld. Advocate Mr. Hakim has argued that there is no threat of eviction from the premises where the plaintiff landlady is staying at present as no notice has ever been given to her by the owner of the said building. He has, therefore, submitted that in view of the judgment delivered in the case of Panchal Manilal & Another v/s Mistry Mahashankar Chhotalal AIR 1988 GUJ. 177, as there is no threat of eviction, decree should not have been passed by the trial Court. It is an admitted fact that the plaintiff landlady, at the time of filing of the suit, was staying in her father's house. Normally no father would initiate legal proceedings for eviction against her daughter. It would be sufficient for him to request his daughter to vacate the house. Moreover, in the instant case, the plaintiff landlady wanted to shift to her own house for the reasons submitted by Ld. Advocate Mr. Majmudar which have been referred to hereinabove. In the instant case, I do not think that simply because the plaintiff landlady is staying in a house which earlier belonged to her father, she has no right to shift to her own house.

With regard to comparative hardship, it is clear that as the plaintiff landlady is in need of her own house, for the reasons stated hereinabove, looking to her bonafide requirement, the courts below have rightly held in favour of the plaintiff landlady and her suit for eviction has rightly been decreed.

After hearing the concerned advocates and looking to the facts of the case, I do not find any substance in this Revision Application. I do not see any reason to disturb the concurrent findings arrived at by the Courts below. By no stretch of imagination it can be said that the findings arrived at by the courts below are unreasonable or perverse. It would not be just and proper for this Court to disturb concurrent findings simply because it is possible to take another view in the matter. Bonafide requirement of the plaintiff landlady still survives. She wants to stay on the ground floor looking to the personal difficulties which are faced by her father-in-law. It is for the plaintiff landlady to decide as to which house would be more convenient to her

and as observed by the hon'ble Supreme Court in the case of Mrs. Meenal Eknath Kshirsagar v/s Traders and Agencies & Anr., reported in 1996(5) SCC at page 344, I do not think that this Court should decide as to how the plaintiff landlady should live. It is for the landlady to decide as to how and in what manner she should live and she is the best judge of her residential requirement. The hon'ble Supreme Court has also observed in the case of Smt. Parvatidevi v/s T.V.Christian reported in 1996(5) SCC at page 353 that normally the landlord is the best judge of his residential requirement.

In view of the above-referred legal position and concurrent findings arrived at by the courts below, I do not see any reason to interfere with the said findings and this Revision Application is dismissed.

In view of the fact that the petitioner original defendant tenant is in occupation of the suit premises since 1974, it will be just and proper to give him some time to vacate the premises. The courts below had also granted sufficient time to the defendant tenant. In spite of the said fact, I grant time up to 30.9.1997 to the petitioner- original defendant tenant to vacate the suit premises on a condition that defendant-tenant files usual undertaking within two weeks from today.

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